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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ROBERTO A., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO A.,

Defendant and Appellant.

D051886

(Super. Ct. No. J JL23811)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]

THE COURT:

The opinion, filed December 15, 2008, is modified as follows:

1. On page 2, third paragraph, in the sentence beginning "At that point," the word "wearing" is changed to "carrying" so the sentence reads:

At that point, the officer noticed Roberto was carrying dark clothing, which matched the description provided by Zamora and Ramirez.

2. On page 6, second full paragraph, in the sentence beginning "Miranda warnings are not required" the word "necessarily" is inserted between the words "not" and "required" so the sentence reads:

Miranda warnings are not necessarily required when a person is temporarily detained.

3. On page 6, in the last line on the page, delete point page 680 in the citational reference to *People v. Clair* (1992) 2 Cal.4th 629, 679.

4. The paragraph commencing on page 8 with "We realize" and ending at the top of page 9 with "(*Ibid.*)" is deleted in its entirety and the following is inserted in its place:

We realize that handcuffing is one of the indicia of arrest, but it is not dispositive here. The mere presence of some coercive elements does not necessarily create a custodial situation. (*Oregon v. Mathiason, supra*, 429 U.S. at p. 495; *California v. Beheler, supra*, 463 U.S. at pp. 1123-1125.) The fact Roberto was placed in handcuffs does not by itself show that he had been arrested or was in custody for purposes of *Miranda*. (See *People v. Clair, supra*, 2 Cal.4th at p. 679.) In *People v. Clair, supra*, 2 Cal.4th at page 679, our Supreme Court upheld a finding of no custody when an officer, with his gun drawn, approached the defendant at an apartment crime scene to ask who he was, whether he had identification and was living in the apartment, what he was doing in the apartment and whether he knew the residents. "Certainly, this fact [gun drawn] alone does not transform the situation into one of 'custody.'" (*Ibid.*; accord, *People v. Taylor* (1986) 178 Cal.App.3d 217, 230 [recognizing that *Miranda* warning need not "be given in each instance where police officers initially use weapons or other force to effect an investigative stop"].) Hernandez did not point a gun at Roberto; his handcuffing of Roberto was no more coercive than that present in *People v. Clair, supra*, 2 Cal.4th 629. Moreover with respect to custodial interrogations, *Miranda, supra*, 384 U.S. at pages 477 to 478, was more concerned with "techniques of persuasion" that "reflect a measure of compulsion," such as suggestive line-ups and psychological ploys, than with basic police actions. (*Rhode Island v. Innis* (1980) 446 U.S. 291, 299, 300.) Hernandez's application of handcuffs in this scenario was a basic police action. As *Aguilera, supra*, 51 Cal.App.4th 1151, 1162, teaches, no one circumstance is determinative. "Rather, we look at the

interplay and combined effect of all the circumstances to determine whether on balance they created a coercive atmosphere such that a reasonable person would have experienced a restraint tantamount to an arrest." (*Ibid.*)

Roberto argues that *People v. Pilster* (2006) 138 Cal.App.4th 1395, 1405 — in which a *Miranda* violation was found when the defendant was handcuffed before police questioned him — is controlling. We disagree because, as the *Pilster* court acknowledged, there is no per se rule that police must provide *Miranda* warnings before interrogating a handcuffed suspect, and the issue must be resolved on a case-by-case basis. (*Id.* at p. 1404.) Moreover, this case is distinguishable from *Pilster*, which involved a situation where, after the defendant had assaulted the victim with a beer bottle in a bar brawl, a bouncer grabbed the defendant, escorted him outside and held him until the police arrived. (*Id.* at pp. 1398-1400.) Police immediately handcuffed the defendant and proceeded to question him about the altercation without giving *Miranda* warnings. (*Id.* at p. 1400.) Here, Officer Hernandez initially detained Roberto because he ran from the patrol unit and handcuffed the youth for safety purposes. The officer's first question to Roberto was a general one that was not tied to the Carl's Jr. robbery.

5. On page 11, the first full paragraph, in the sentence beginning "Moreover," the word "wearing" is changed to "carrying" so the sentence reads:

Moreover, Roberto was carrying clothes similar to those worn by the robber.

There is no change in the judgment.

Appellant's petition for rehearing is denied.

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BENKE, Acting P. J.

Copies to: All parties